

In the Matter Of:

In Re - LTL Management, LLC

ROBERT WUESTHOFF

May 30, 2023



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<p>UNITED STATES BANKRUPTCY COURT</p> <p>DISTRICT OF NEW JERSEY</p> <p>-----X</p> <p>In Re:</p> <p>LTL MANAGEMENT, LLC,</p> <p>Debtor.</p> <p>Case No. 21-30589 (MBK)</p> <p>-----X</p> <p>***CONFIDENTIAL***</p> <p>VIDEOTAPED DEPOSITION OF ROBERT WUESTHOFF</p> <p>DATE: May 30, 2023</p> <p>TIME: 10:06 a.m.</p> <p>PLACE: ***REMOTE***</p> <p>BEFORE: Rebecca Schaumloffel, RPR, CCR-NJ</p> <p>JOB NO: 2023-898652</p>	<p>1</p> <p>2 Appearances (continued:)</p> <p>3</p> <p>4</p> <p>5 JONES DAY</p> <p>6 Attorneys for the Debtor</p> <p>7 250 Vesey Street</p> <p>8 Suite 31</p> <p>9 New York, New York 10281</p> <p>10 BY: JAMES JONES, ESQ.</p> <p>11 OLIVER ROBERTS, ESQ.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16 MASSEY & GAIL, LLP</p> <p>17 2000 Maine Avenue SW</p> <p>18 Washington, D.C. 20024</p> <p>19 BY: RACHEL MORSE, ESQ.</p> <p>20</p> <p>21</p> <p>22 MAUNE RAICHLE HARTLEY FRENCH & MUDD, LLC</p> <p>23 Attorneys for Ad Hoc Committee of</p> <p>24 mesothelioma claimants</p> <p>25 659 Eagle Rock Avenue</p> <p> Suite 28</p> <p> West Orange, New Jersey 07052</p> <p> BY: CLAY THOMPSON, ESQ.</p> <p> JOSHUA McMAHON, ESQ.</p> <p> OFFICE OF THE UNITED STATES TRUSTEE</p> <p> Attorneys for the United States</p> <p> Department of Justice</p> <p> One Newark Center</p> <p> Suite 2100</p> <p> Newark, New Jersey 07102</p> <p> BY: LAUREN BIELSKIE, ESQ.</p> <p> LINDA RICHENDERFER, ESQ.</p>
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1 R. WUESTHOFF
2 answered.
3 But you may go ahead.
4 **A. Again, it varies. Some cases,**
5 **it's 20, 30, or 40 hours. Some cases, it's**
6 **10. Sometimes, frankly, it's less than 10.**
7 **But it just varies. It ebbs and flows.**
8 Q. Okay. I want to ask you: What is
9 your understanding, as President of the
10 Debtor, of the Debtor's assets as of its
11 bankruptcy filing, let's see, not quite two
12 months ago in early April of this year?
13 **A. Yeah, our assets are the assets of**
14 **LTL and RAM, plus the new Funding Agreement.**
15 Q. Thank you. And when you say, "the
16 assets" -- let's put the Funding Agreement to
17 the side for a minute. You say, "the assets
18 of LTL and RAM."
19 What -- more particularly, what
20 are the assets of LTL and RAM, to your
21 understanding?
22 **A. Yeah, the -- it's -- LTL's cash, I**
23 **think, approximately 30 million. Some of**
24 **this is -- so I'm going off of memory, but**
25 **this is in one of our board decks. But RAM,**

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1 **R. WUESTHOFF**
2 **30 million cash -- I mean LTL, 30 million**
3 **cash. The net present value or the value of**
4 **the royalties for RAM, the 367, plus, again,**
5 **another 75 or so with the new ones. That's**
6 **really what LTL has in terms of assets.**
7 Q. Okay. And then, I think you
8 mentioned the Funding Agreement?
9 **A. And the Funding Agreement.**
10 Q. All right. We will talk about
11 that in a minute.
12 How about liabilities, what's your
13 understanding of the liabilities of LTL when
14 it filed in early April 2023?
15 **A. We have the talc liabilities.**
16 Q. Okay. And, to your knowledge, are
17 those the only liabilities that LTL had when
18 it filed bankruptcy?
19 **A. Well, we have the legal fees that**
20 **we need to pay and things like that. Again,**
21 **and Rich has a better understanding of those**
22 **liabilities than I do. But those are out**
23 **there as, you know, liabilities that we have.**
24 Q. And when you say, "talc
25 liabilities," what do you mean by that?

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1 R. WUESTHOFF
2 **A. I mean it's the value of the talc**
3 **liabilities that are out there. 40,000 now,**
4 **maybe 60,000 claims. Yeah, it's the Funding**
5 **Agreement and the Funding Agreement is the**
6 **value of those talc liabilities.**
7 Q. Okay. Again, we will come back to
8 the Funding Agreement in a minute. Hold on
9 one second. Hold on one second, I'll just
10 make a note.
11 So we'll come back to the Funding
12 Agreement, but I think you said a number of
13 things. I want to make sure I understand.
14 You said 40 to 60,000 claims.
15 What is the basis of your saying that the
16 talc liabilities are represented by 40 to
17 60,000 claims?
18 **A. It's -- back when we filed**
19 **originally in 2021, it was about 38,000**
20 **claims and growing. And right now, my**
21 **understanding is we have out there some,**
22 **probably, 60,000 or more that are out there**
23 **now as claims.**
24 Q. Okay. And how do you know that?
25 **A. Well, we know with our Plan**

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1 **R. WUESTHOFF**
2 **Support Agreement, we have an agreement with**
3 **lawyers representing some 50 to 60,000, I**
4 **don't know the exact number, claimants. So**
5 **we know the number's that big, if not bigger.**
6 Q. And I think you referred -- I
7 think you said the value of the talc claims.
8 Do you have an understanding --
9 strike that.
10 Does LTL have an estimate of its
11 total talc liabilities?
12 MR. JONES: Object to form.
13 **A. We don't have an estimate, but we**
14 **have no reason to believe that it is much**
15 **more than the 9 -- \$8.9 billion PSA Agreement**
16 **that is currently out there with the majority**
17 **-- with lawyers representing the majority of**
18 **claimants signing up to that deal of**
19 **\$8.9 billion for all current and future**
20 **claims. That gives us a strong barometer as**
21 **to what the value of the talc liabilities is.**
22 Q. So you think that the total --
23 that LTL's total talc liability does not
24 exceed \$8.9 billion; is that right?
25 **A. Correct.**

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1 **R. WUESTHOFF**
2 MR. JONES: Object. Form.
3 Q. Okay.
4 **A. Yeah, I mean, like I said, that --**
5 **that is a strong barometer to us of what that**
6 **value is. And it's -- you know, it's -- you**
7 **know, another data point would be: It's over**
8 **twice, or nearly twice, what the Imerys deal**
9 **was on the table a couple of years ago. So**
10 **we have no reason to believe that it would be**
11 **more than the \$8.9 billion.**
12 Q. Okay.
13 **A. And I might just add -- and just**
14 **throw it in there, sorry, but, you know, we**
15 **don't believe our talc causes cancer. So**
16 **there's no reason to believe that it should**
17 **be higher than that.**
18 Q. Okay. So do you -- so based on
19 your belief that talc doesn't cause cancer,
20 is it your belief that LTL's talc liability
21 is zero?
22 **A. No, I didn't say that. I said --**
23 **we don't -- we believe the value of those**
24 **talc liabilities is the \$8.9 billion deal**
25 **that's on -- that's currently been**

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1 **R. WUESTHOFF**
2 **negotiated. I was suggesting why we don't**
3 **think it's any higher than that.**
4 Q. Okay. But you -- you would agree
5 that LTL's talc liability could be lower than
6 \$8.9 billion, correct?
7 **A. Could be, yes.**
8 Q. Okay. So do you think it's fair
9 to say that LTL believes -- you are the
10 President of LTL, so I want to talk about
11 LTL -- that LTL believes its total talc
12 liabilities is somewhere between 0 and
13 \$8.9 billion; is that correct?
14 MR. JONES: Object to form of
15 the question. Asked and answered.
16 **THE WITNESS: I'm sorry, Jim,**
17 **when you say "asked and answered,"**
18 **what do you mean?**
19 MR. JONES: I think he's asked
20 the question before and you've given
21 him your best answer. But if you have
22 a different answer, go ahead.
23 **THE WITNESS: No, I don't have a**
24 **different answer.**
25 BY MR. JONAS:

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1 R. WUESTHOFF
2 **A. I think it's -- you know, some- --**
3 **yeah, somewhere between 0 and 8.9. I don't**
4 **think it's higher than 8.9.**
5 Q. Okay. And let me ask you: Do
6 you -- as President of LTL, have you been
7 given -- and, again, I'm not asking you to
8 disclose specific legal advice you've
9 received. I just would like to know whether
10 you have been -- you have access to any
11 documents which would -- strike that. Bad
12 question. So I'll strike it.
13 Okay. I want to just -- so let's
14 just talk about in one specific context. I
15 think we've talked about the assets and
16 liabilities of LTL as of its latest
17 bankruptcy filing with one exception.
18 You said there was an additional
19 asset, which was the Funding Agreement,
20 correct?
21 **A. Correct.**
22 Q. And can -- would you agree that,
23 for today's deposition, when -- we can talk
24 about the first bankruptcy is the LTL 1 and
25 the second is LTL 2; can we do that?

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1 R. WUESTHOFF
2 **A. Yes.**
3 Q. And can we also agree that the
4 Funding Agreement -- we'll talk about the
5 first Funding Agreement as Funding Agreement
6 1 and the second one is Funding Agreement 2;
7 is that okay?
8 **A. That's what I like to do. Yes,**
9 **that's perfect.**
10 Q. Great. Great. Then we are on the
11 same page.
12 So let me ask you: Funding
13 Agreement 2, which we are talking about in
14 terms of the second bankruptcy, the Debtor's
15 assets as of the filing, what is your
16 understanding of the value of Funding
17 Agreement 2?
18 MR. JONES: Object to the form
19 of the question.
20 To the extent you understand,
21 you can answer.
22 **A. Yeah, my understanding of the**
23 **value of the Funding Agreement is the value**
24 **of the talc liabilities minus the value of**
25 **LTL.**

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1 **R. WUESTHOFF**
2 Q. Okay. So just to see if I
3 understand what you are saying, the value of
4 the Funding Agreement is somewhere between 0
5 and 8.9 billion less the value of LTL; is
6 that right?
7 **A. Yes, that would be -- yes, that**
8 **would be correct.**
9 Q. Okay. And now, for a minute --
10 well, strike that.
11 Okay. We'll talk more about that
12 in a minute.
13 For a minute, I just want to
14 revert to the LTL 1. That is the first
15 bankruptcy that LTL filed in October of 2021.
16 What is your understanding of what
17 LTL's assets were as of October 2021, when it
18 first filed for bankruptcy?
19 MR. JONES: This is not a memory
20 test involved, but if you can answer,
21 Mr. Wuesthoff, please do.
22 **A. I believe it's the same answer as**
23 **now, that the value was the value of the talc**
24 **liabilities minus the value of LTL.**
25 Q. And just bear with me, I just want

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1 **R. WUESTHOFF**
2 to make sure I process what you are saying.
3 MR. JONES: I think Mr. Jonas
4 asked for the assets of the LTL 1
5 filing. He didn't ask for -- there
6 may have been disconnect or there may
7 not have been. I leave --
8 MR. JONAS: Thank you, Jim.
9 Thank you, Jim. That's why I was a
10 little stumped there for a minute.
11 So, thank you.
12 BY MR. JONAS:
13 Q. So let me state it again,
14 Mr. Wuesthoff.
15 What were the assets of LTL when
16 it filed bankruptcy the first time in October
17 of 2021?
18 **A. Yeah, so maybe I answered the**
19 **wrong question.**
20 **The assets were LTL's assets plus**
21 **Funding Agreement number 1.**
22 Q. Okay. And when we say, "LTL's
23 assets," let me see if I've got that right.
24 That was -- it owned RAM, which
25 had some royalty streams, a little bit less

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1 **R. WUESTHOFF**
2 than they are today, correct?
3 **A. Correct.**
4 Q. And the only other asset was the
5 Funding Agreement -- the Funding Agreement 1,
6 correct?
7 **A. Correct.**
8 Q. Okay. And what was the value of
9 Funding Agreement 1? We've talked about 2.
10 Now I want to go back.
11 What was the value of Funding
12 Agreement 1?
13 **A. The value of Funding Agreement 1**
14 **was the value of the talc liabilities minus**
15 **the value of LTL.**
16 Q. Okay. So -- which is, I think you
17 said, is really -- it's really -- do you see
18 any difference in the value of Funding
19 Agreement 1 and Funding Agreement 2?
20 **A. No. We believe they are**
21 **equitable. They are equal.**
22 Q. Okay. So when I look at the
23 financial condition of LTL 1 versus LTL 2, at
24 the time that each of those entities filed
25 bankruptcy, do you believe there is a

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1 **R. WUESTHOFF**
2 difference between the financial condition of
3 LTL 1 when it filed and LTL 2 when it filed?
4 MR. JONES: Object to form.
5 **A. I believe the same. That we are**
6 **in financial distress in each situation.**
7 Q. Okay. And do you see -- do you
8 believe there is -- if you can be more
9 specific.
10 Is there any difference in the
11 financial distress which existed when you
12 first filed and when you -- the second time
13 you filed?
14 **A. Yes. My understanding is, there**
15 **is. We have -- this time, we have all the**
16 **issues we had last time plus another**
17 **20,000-plus cases that we didn't have last**
18 **time. And we have a Funding Agreement that,**
19 **my understanding is, now has a material risk**
20 **of being void or voidable, and that's a big**
21 **difference.**
22 Q. So you think the Funding Agreement
23 2 that LTL has in place today is at risk of
24 being void or voidable?
25 **A. No. The Funding Agreement 1 -- I**

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1 **R. WUESTHOFF**
2 **thought we were comparing the value of both.**
3 Q. Yes.
4 **A. Yes.**
5 Q. Funding Agreement 1 has been
6 terminated, correct?
7 **A. It has.**
8 Q. Okay. So we don't have to talk
9 about Funding Agreement 1 in the context of
10 the second bankruptcy filing.
11 I'm simply trying to understand
12 your knowledge as President of LTL of the
13 difference in LTL's financial condition in
14 October '21, when it filed, and April '23,
15 when it filed.
16 MR. JONES: And to the extent
17 that the question -- I object to
18 instructing the witness not to
19 consider something. He can consider
20 whatever he chooses appropriate. And
21 at the time of that filing, he was
22 telling you what he thought was
23 appropriate.
24 MR. JONAS: Jim, you can make
25 objections, but I don't think it's --

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1 **R. WUESTHOFF**
2 speaking objections are appropriate.
3 BY MR. JONAS:
4 **A. Okay. I'm sorry, Mr. Jonas, and I**
5 **hate to do this to you, but can you state the**
6 **question again?**
7 Q. Yeah. No, don't be sorry. No
8 problem. I'm always happy to do that for
9 you. So, any time.
10 My question is, I just want to
11 understand, as President of LTL, what you
12 believe to be the difference in financial
13 condition of LTL 1, when it filed, and --
14 well, of LTL when it filed its first
15 bankruptcy and LTL when it filed its second
16 bankruptcy?
17 MR. JONES: Asked and answered.
18 **A. We were in financial distress in**
19 **both situations.**
20 Q. And do you believe there is
21 differences in the nature of LTL's financial
22 distress in October of '21 versus April of
23 '23?
24 **A. Other than the fact that there are**
25 **more cases out there than we had before, I**

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1 **R. WUESTHOFF**
2 **think that would probably be the biggest**
3 **difference.**
4 Q. And let me ask you: When you say
5 "there are more cases," when you say "cases,"
6 what do you mean by that?
7 Are those -- strike that.
8 **A. Claims. Claims. Claims.**
9 Q. And how do you know there are more
10 cases today, or at the beginning of this
11 bankruptcy case, than there were during the
12 other bankruptcy case?
13 **A. I know back then, you know, LTL 1,**
14 **we had some 38,000 cases or claims. And we**
15 **know it was growing. And we know today,**
16 **based on the number of claimants that -- the**
17 **lawyers who have agreed to the PSA represent**
18 **is in the area of 50, 60,000 or more. So we**
19 **know the number has grown.**
20 Q. Do you know that the lawyers that
21 have signed PSAs that allege to represent
22 claimants, that they didn't have those
23 claimants back in October of '21?
24 **A. I don't have knowledge of any of**
25 **that.**

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1 **R. WUESTHOFF**
2 Q. So you don't know if these 60 odd
3 thousand claims are new claims or not, do
4 you?
5 **A. I don't know, of the 60,000, how**
6 **many are new and how many were there**
7 **previously, no.**
8 Q. Okay. And let me ask you, as
9 President of LTL: What is your understanding
10 of the purpose of LTL's second bankruptcy
11 case?
12 **A. The purpose is the same as the**
13 **purpose was the first time. To permanently,**
14 **equitably, and efficiently resolve all**
15 **current and future talc cases -- claims.**
16 Q. Put another way, the purpose was
17 to deal with the talc litigation, correct?
18 MR. JONES: Object to form.
19 **A. That might be a legal term, but**
20 **I'll restate what I said. We had the same**
21 **mission and objective we had the first time.**
22 Q. Yeah. Well, before the first
23 bankruptcy, there were many, many cases,
24 litigation cases, court cases that were
25 getting filed, not against LTL because LTL

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1 R. WUESTHOFF
2 didn't exist, but that were getting filed
3 against related entities, correct?
4 **A. Correct.**
5 Q. And the purpose of that first
6 filing was to address all of those cases,
7 right?
8 MR. JONES: Object to form.
9 Q. I'm sorry, I didn't hear your
10 answer.
11 **A. Yes.**
12 Q. Okay. And that purpose hasn't
13 changed, right?
14 Again, the reason that LTL has
15 filed bankruptcy is to address all of that
16 litigation and cases, correct?
17 **A. It's to resolve all of the current**
18 **and future claims.**
19 Q. Okay. Okay.
20 All right. Let me see.
21 MR. JONAS: I'm going to ask
22 Isaac to pull up document number 4.
23 Q. And I think you know,
24 Mr. Wuesthoff, I have had some documents
25 loaded -- just so you know what's going on,

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1 R. WUESTHOFF
2 loaded up by the Lexitas team. And I'll call
3 out numbers, and he can pull them up, and
4 then we can talk about them.
5 Okay?
6 **A. Sure, okay.**
7 Q. Okay.
8 THE VIDEOGRAPHER: Mr. Jonas,
9 you're saying tab 4?
10 MR. JONAS: I'm sorry. Tab 4,
11 yes. I'll try and do a better job,
12 Isaac.
13 MR. JONES: And I believe, Bob,
14 they will be placed in the chat view,
15 and you can download the documents so
16 that you can, yourself, manipulate
17 them from your laptop -- from your
18 desktop.
19 **THE WITNESS: When I download**
20 **it, will I lose the video? I'll just**
21 **see the document, I guess?**
22 MR. JONES: Well, you can toggle
23 back and forth between the video and
24 the PDF I believe is the way it should
25 work if you download it to your

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1 R. WUESTHOFF
2 desktop.
3 **THE WITNESS: Okay. I'll give**
4 **it a shot.**
5 MR. JONAS: Yeah. And if
6 anything happens, we will wait for
7 you.
8 **THE WITNESS: All right.**
9 (Whereupon, Wuesthoff Exhibit 1,
10 LTL 0002300 through '2320 was marked
11 for identification as of this date by
12 the Reporter.)
13 **THE WITNESS: So should I be**
14 **downloading something now?**
15 MR. JONES: I don't see it yet.
16 THE VIDEOGRAPHER: It's there.
17 Hold on. I'm sorry. No, it's
18 not.
19 4. There we go. It's there
20 now.
21 MR. JONES: You see it, Bob, in
22 the chat function?
23 **THE WITNESS: Yep, I see a tab.**
24 BY MR. JONAS:
25 **A. Okay. I have it open.**

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1 **R. WUESTHOFF**
2 Q. All right. Hold on.
3 Okay. Good. Mr. Wuesthoff, I've
4 asked the court reporter to put up what's
5 been marked as tab 4, which we will mark as
6 Wuesthoff Exhibit Number 1.
7 And this is the "AMENDED AND
8 RESTATED FUNDING AGREEMENT," dated
9 October 12, 2021.
10 And if I turn to the back of the
11 document where the signatures are, just want
12 to make sure that's your signature on behalf
13 of --
14 MR. JONAS: Whoops. Wait a
15 second.
16 MR. JONES: That was a very busy
17 screen, Jeff.
18 MR. JONAS: Yes, it was.
19 BY MR. JONAS:
20 Q. Can you -- let me just ask, can
21 you see the document, Mr. Wuesthoff?
22 **A. Well, it's just -- I think I have**
23 **to download it again, because it opened and**
24 **then it closed.**
25 Q. Okay.

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1 R. WUESTHOFF

2 happened next in connection with the ultimate

3 termination of Funding Agreement 1?

4 **A. I believe, and my understanding is**

5 **that LTL tried to have that reheard and that**

6 **was, my understanding, denied, and,**

7 **ultimately, they -- Third Circuit issued an**

8 **order to dismiss the bankruptcy.**

9 Q. Let me ask you: Do you have an

10 understanding, as President of LTL, that the

11 first Funding Agreement obligated Johnson &

12 Johnson whether or not LTL was in bankruptcy?

13 **A. Yes. My understanding.**

14 Q. Okay, thank you. So did -- as

15 President of LTL, did you consider seeking to

16 enforce the first Funding Agreement against

17 J&J outside of bankruptcy after the case was

18 dismissed?

19 **A. To my knowledge, no.**

20 Q. Okay. And when I -- when I asked

21 you, as President of LTL, I take it the Board

22 didn't consider the possibility of seeking to

23 enforce the first Funding Agreement against

24 Johnson & Johnson after the first bankruptcy

25 case was dismissed, correct?

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1 R. WUESTHOFF

2 **A. Not to my knowledge.**

3 Q. Okay. And I know you don't know

4 specifically, but, I take it, at some point,

5 and I -- just that I'm not trying to hide

6 anything from you, obviously, there is --

7 we'll get to some of the board minutes.

8 It looks like in late February,

9 early March-ish, there was some discussion at

10 the Board level about contingent planning?

11 Do you recall that?

12 **A. Yes.**

13 Q. Okay. And do you recall whether,

14 as part of that contingent planning, that

15 included the possible termination of the

16 first Funding Agreement?

17 **A. Yes, that was a possibility.**

18 Q. Okay. And as President of LTL --

19 strike that.

20 And I'm not asking you for the

21 specific advice, but I think you said at some

22 point, you were advised about the risk of the

23 Funding Agreement -- the first Funding

24 Agreement being void or voidable, correct?

25 MR. JONES: Object to the form

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1 R. WUESTHOFF

2 of the question. Calls for the

3 disclosure of legal advice, expressly

4 calls for it.

5 I think he told you what his

6 understanding was, and his testimony

7 is otherwise whatever it was.

8 BY MR. JONAS:

9 **A. Yes, it was my understanding.**

10 Q. Okay. Did you engage -- strike

11 that.

12 Did the void or voidability of the

13 Funding Agreement concern you, as President

14 of LTL, cause you some distress?

15 **A. I wasn't concerned. I took it as**

16 **matter of fact, based on my understanding.**

17 Q. And did you -- either as President

18 or at the Board level, did you discuss

19 negotiating with J&J in terms of the

20 possibility of the Funding Agreement being

21 void and void and how that might be resolved?

22 **A. Not at the Board level. I wasn't**

23 **aware of or involved in any negotiation.**

24 Q. Okay. Well, at any level, were

25 you involved in any negotiation?

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1 R. WUESTHOFF

2 **A. No.**

3 Q. Do you know whether any

4 negotiation with J&J took place on behalf of

5 LTL?

6 **A. I do not know. I'm not aware.**

7 Q. Did you ask about that?

8 **A. No, I did not.**

9 MR. JONES: I'm sorry, I didn't

10 hear the answer.

11 **THE WITNESS: I said, "No, I did**

12 **not."**

13 MR. JONES: Thank you.

14 BY MR. JONAS:

15 Q. So let me -- I just want to -- and

16 I'm certainly not judging, you are a

17 sophisticated business person, and I just

18 want to understand because it's important to

19 my clients.

20 So would you agree with me that

21 LTL had an asset, which was -- I think you've

22 referred to it as an asset -- which was

23 Funding Agreement 1, correct?

24 **A. Correct.**

25 Q. And would you agree with me that

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1 R. WUESTHOFF
2 the value of that asset to LTL could have
3 been as much as \$61 billion, correct?
4 MR. JONES: Object as asked and
5 answered.
6 **A. I would say "could have," except I**
7 **was -- and the Board's understanding was that**
8 **it was not enforceable.**
9 Q. Okay. And my question is: Were
10 you -- was it -- were you alarmed that, at
11 some point in February or March of 2023, you
12 were advised that the Debtor may have lost or
13 no longer had access to its most valuable
14 asset?
15 **A. Not necessarily because we were**
16 **presented with a solution that met our**
17 **objectives. It eliminated that risk of void**
18 **or voidability and it supported the terms of**
19 **the Plan Support Agreement to permanently**
20 **settle all of our current and future claims.**
21 **So we looked at that as a very**
22 **viable solution.**
23 Q. Do you know if it was Johnson &
24 Johnson or LTL that first raised the void or
25 voidability issue?

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1 R. WUESTHOFF
2 **A. I have no idea.**
3 Q. Did you ask anyone?
4 **A. No.**
5 Q. Did it occur to you that if
6 Johnson & Johnson didn't raise the issue,
7 maybe there was no need to terminate and
8 enter into a new Funding Agreement?
9 **A. As the Board, we were advised --**
10 **not advised. Our understanding was that --**
11 **and we knew that the lawyers for LTL and J&J**
12 **and HoldCo were talking, and that there was a**
13 **termination -- determination that -- and this**
14 **was represented back to us by John Kim, that**
15 **that agreement had a material risk of being**
16 **void or voidable.**
17 Q. Well, I understand you are telling
18 me that you were told that there was a
19 material risk, but my question is: As an
20 officer -- strike that.
21 Do you understand that as an
22 officer and director of LTL, you have
23 fiduciary duties to LTL's creditors?
24 MR. JONES: Object to the form
25 of the question.

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1 R. WUESTHOFF
2 **A. My understanding is that my**
3 **fiduciary duties are primarily to LTL. We do**
4 **take into consideration the claimants, but**
5 **our primary duties -- you know, duty of good**
6 **faith, duty of care, duty of loyalty are to**
7 **LTL's primarily.**
8 Q. Well, and when you say "LTL," do
9 you mean LTL's equity owner, is that who you
10 are referring to?
11 **A. No, LTL.**
12 Q. Okay. Well, let me understand,
13 LTL -- the only things at LTL, the only
14 interests, there are talc claimants, those
15 are creditors, correct?
16 **A. Yes.**
17 Q. And there -- there's no other
18 creditors of LTL, right?
19 **A. There could be. That's a John Kim**
20 **question. I mean, there are -- there could**
21 **be others. You know, I don't know.**
22 Q. You don't know whether there are
23 any other creditors other than talc claimants
24 of LTL?
25 **A. I think there are -- there could**

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1 R. WUESTHOFF
2 **be, but I would be speculating.**
3 Q. Okay. And other than creditors,
4 the only other interest at LTL are its
5 owners, the equity, correct?
6 MR. JONES: Object to form.
7 **A. No. We are a subsidiary. The**
8 **Board members -- you know, we're accountable**
9 **to the Board, to ourselves, and we have LTL's**
10 **interest in mind and those interests,**
11 **primarily, are to resolve all the claims,**
12 **current and future.**
13 Q. Well, let me ask you: Do you
14 believe you have a fiduciary duty to
15 creditors?
16 MR. JONES: Object as asked and
17 answered.
18 Q. You can answer.
19 **A. Like I said before, I believe my**
20 **primary fiduciary responsibility is to LTL,**
21 **but we do take into consideration**
22 **stakeholders, such as claimants.**
23 Q. Okay. What other stakeholders are
24 there of LTL, other than talc claimants?
25 **A. There would be other subsidiary --**

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1 **R. WUESTHOFF**
2 **other areas within J&J.**
3 Q. What other areas within J&J?
4 **A. HoldCo, J&J.**
5 Q. And so, is it your testimony that
6 you believe you have a fiduciary duty to
7 HoldCo and J&J?
8 **A. No. No. I don't think that's**
9 **what I said. My primary -- my fiduciary**
10 **responsibility is to LTL.**
11 Q. Yeah, and I'm trying to understand
12 who -- what is LTL? When you say you have a
13 fiduciary duty to LTL, LTL -- there is only
14 two constituencies.
15 There is creditors and there is
16 the owners, right; who else is there?
17 MR. JONES: He has asked and
18 answered the question.
19 **A. We are a subsidiary of HoldCo, but**
20 **we're all -- you know, we're our own**
21 **subsidiary.**
22 Q. Okay. So as far as you know --
23 well, strike that.
24 What do you know about the
25 discussions between LTL and Hold- -- and J&J

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1 **R. WUESTHOFF**
2 relating to termination of Funding Agreement
3 1?
4 **A. I don't have any direct knowledge**
5 **of those discussions.**
6 Q. Okay. You don't know whether --
7 and just so I understand, and then we can
8 move on, you don't know whether J&J first
9 raised the issue and said, hey, you know, we
10 think the Funding Agreement is void and
11 voidable, you don't know whether it was J&J
12 or LTL, right?
13 **A. No, I do not.**
14 Q. You don't know whether LTL pushed
15 back and had a -- and had a negotiation with
16 J&J, right?
17 **A. I do not know that.**
18 Q. Okay. Do you know whether anyone
19 at LTL reached out to any of its creditors to
20 discuss the situation with them?
21 **A. I do not know that.**
22 Q. Okay. Well, did you inquire about
23 that? Did you ask, should we raise this with
24 our -- with the Talc Claimants Committee or
25 anyone else?

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1 **R. WUESTHOFF**
2 **A. No, I did not.**
3 Q. Okay. What -- let me ask you --
4 and, again, at this point, I'm not asking for
5 the substance.
6 What analysis were you provided
7 with respect to what you have referred to as
8 "the issue of void or voidability" of Funding
9 Agreement 1?
10 MR. JONES: I'm going to object
11 and ask for the witness not to share
12 privileged communications with
13 counsel. If there is anything else,
14 you can -- you may certainly share it.
15 BY MR. JONAS:
16 **A. The only thing I can share is what**
17 **I've said before, is: My understanding is**
18 **that those agreements were void or voidable.**
19 **That's just my understanding from the**
20 **lawyers, that there was a material risk that**
21 **they were void and voidable.**
22 Q. Okay. Did the Board take into --
23 take creditors' interests into consideration
24 in connection with terminating the first
25 Funding Agreement?

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1 **R. WUESTHOFF**
2 **A. Well, from the outset in our**
3 **objective of equitably and efficiently**
4 **resolving current and future claims, we are**
5 **always thinking about claimants.**
6 **And, you know, I should add that**
7 **it was also represented to us that we had**
8 **lawyers representing a majority of the**
9 **claimants supporting -- supporting our second**
10 **bankruptcy and the 8.9 billion settlement or**
11 **resolution, deal, if you will.**
12 Q. Is it your testimony that the PSAs
13 with lawyers allegedly supporting your deal,
14 those were in place at the time that LTL
15 first began discussing terminating the
16 Funding Agreement with Johnson & Johnson?
17 **A. I don't know the status of them.**
18 **I know it was -- those discussions were**
19 **happening and our understanding was that, you**
20 **know, high probability that that support was**
21 **there.**
22 Q. Okay.
23 MR. JONAS: We're -- just so --
24 for everybody on the Zoom here, we're
25 going to -- I'm going to go another

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1 R. WUESTHOFF
2 minute or two and finish this line for
3 now and then we'll take our break.
4 Just so you know where we are
5 headed, Mr. Wuesthoff, but that's --
6 plus we have been going for over an
7 hour, so it would be appropriate to
8 take a break anyway.
9 But let me just finish up with a
10 couple of questions before we break.
11 BY MR. JONAS:
12 Q. Just to try and wrap up on one
13 issue, what did -- did the Board evaluate
14 other options to terminating the first
15 Funding Agreement?
16 **A. No. We were presented with a**
17 **solution that we thought was sufficient.**
18 Q. Okay.
19 MR. JONAS: It's 11:20. Jim, I
20 suggest we resume -- we say we will
21 resume at 12:30.
22 You know, to the extent the
23 hearing is going, I won't jump back on
24 until that's concluded. I suspect
25 that we will hopefully be done by

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1 R. WUESTHOFF
2 12:30.
3 If not, we can take it from
4 there, if that's okay?
5 MR. JONES: I -- yeah, I don't
6 know what -- any other way to manage
7 it, but I think that makes sense,
8 Jeff. Let's try --
9 THE VIDEOGRAPHER: Do you want
10 to go off the record?
11 MR. JONES: Yeah, we can go off
12 the record.
13 MR. JONAS: Yeah, we can go off
14 the record. Thank you.
15 THE VIDEOGRAPHER: We are going
16 off the record at 11:21 a.m.
17 (Whereupon, a lunch recess was
18 held.)
19
20
21
22
23
24
25

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1 R. WUESTHOFF
2 *****AFTERNOON SESSION*****
3 THE VIDEOGRAPHER: We are back
4 on the record at 1:11 p.m. Eastern.
5 BY MR. JONAS:
6 Q. Mr. Wuesthoff, I hope you had a
7 good lunch. Thank you for your patience with
8 me as we wrapped up the court hearing. I
9 just want to return to a few remaining
10 questions where we left off.
11 I think you said the lawyers dealt
12 with the termination of the first Funding
13 Agreement. Can you tell me, to the best of
14 your recollection, what lawyers were involved
15 on behalf of the various parties at that
16 time?
17 MR. JONES: Object to
18 foundation.
19 **A. I just -- I know John Kim.**
20 **Actually, I'm not certain, to be honest. I**
21 **think John Kim, and I think Jones Day, but I**
22 **honestly don't know.**
23 Q. Okay. That's the extent of what
24 you know or can recall about which lawyers
25 were representing whom in connection with the

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1 R. WUESTHOFF
2 Funding Agreement termination?
3 **A. Yes.**
4 Q. Okay. Let's move on. Just give
5 me a -- just bear with me.
6 You are aware that -- strike that.
7 I think you mentioned HoldCo as a
8 party to both the first Funding Agreement and
9 the second agreement.
10 Have I got that right?
11 **A. Well, it was JJCI in the first**
12 **Funding Agreement. In the second Funding**
13 **Agreement, it's HoldCo.**
14 Q. Okay. And that's because the new
15 JJCI, there was a name change and its name
16 was changed to "HoldCo"; is that right?
17 **A. I believe so, yes.**
18 Q. Okay. And I want to ask you a
19 question.
20 Are you aware that, in
21 January 2023, HoldCo transferred its consumer
22 business assets to its parent entity?
23 **A. I was made aware of that.**
24 Q. Okay. And other than being aware
25 that it happened, do you know anything else

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1 R. WUESTHOFF
2 about it?
3 **A. No. I had no involvement with**
4 **that.**
5 Q. Okay. And was that something that
6 you knew was going to take place before it
7 happened or were you advised about it and
8 became aware of it only afterwards?
9 MR. JONES: Object to
10 foundation.
11 **A. I knew nothing about it and had no**
12 **involvement until I heard about it after the**
13 **fact.**
14 Q. Okay. Did it concern you that
15 HoldCo, as a counterparty to the Funding
16 Agreement, had transferred a significant
17 amount of its assets?
18 MR. JONES: Object to form.
19 **A. No. No, I wasn't particularly**
20 **concerned. I mean, that was outside of**
21 **anything I would have anything to do with.**
22 Q. But do you understand that HoldCo
23 was a counterparty or an obligor under the
24 first Funding Agreement?
25 **A. JJCI was.**

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1 **R. WUESTHOFF**
2 Q. Okay, JJCI. Well, I guess, what
3 I'm getting at, are you saying it didn't
4 concern you that JJCI was -- would have less
5 assets available after this transfer to
6 satisfy its obligations?
7 MR. JONES: Object to form.
8 Q. You can answer.
9 **A. I thought -- I thought I just did.**
10 **Can you -- I'm sorry, Mr. Jonas,**
11 **can you repeat?**
12 Q. Sure. Strike that.
13 I think you did answer it well
14 enough and we'll move on.
15 And do you know the value of the
16 consumer business that HoldCo transferred?
17 **A. I do not.**
18 Q. Okay. So you don't know if it's a
19 dollar or \$10 million or you don't have any
20 more information or understanding?
21 **A. I would assume it's more than a**
22 **dollar, but I don't have an understanding of**
23 **it, no.**
24 Q. Okay. Let me ask you: HoldCo is
25 an obligor or counterparty under Funding

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1 R. WUESTHOFF
2 Agreement 2, correct?
3 **A. Correct.**
4 Q. Okay. And do you know the value
5 of HoldCo's assets today?
6 **A. I know what the assets were back**
7 **when the board minutes were published some**
8 **maybe a month or so ago.**
9 Q. Okay. And we will use -- just
10 to -- that's fair. We will use that date.
11 What was -- well, about a month
12 ago, that's when the second Funding Agreement
13 was entered into, correct?
14 **A. Correct.**
15 Q. Okay. So do you know the value of
16 HoldCo's assets at the time the second
17 Funding Agreement was entered into?
18 **A. Yeah, it was approximately 28**
19 **billion, maybe close to 29.**
20 Q. Okay. And is it your
21 understanding that LTL, effectively, would be
22 able to access those assets, if necessary,
23 under the Funding Agreement?
24 MR. JONES: Object to form.
25 **A. Yes.**

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1 **R. WUESTHOFF**
2 Q. I'm sorry, there was an objection.
3 If you can answer that.
4 **A. That's my understanding, yes.**
5 MR. JONES: Mr. Wuesthoff, let
6 me just give you a second to think
7 about -- give me a second, rather, to
8 object if I need to before you answer.
9 Thank you.
10 **THE WITNESS: Okay, sure.**
11 BY MR. JONAS:
12 Q. Do you know, with any more
13 specificity, what the assets of HoldCo are?
14 **A. Not other than what's listed in**
15 **the board minutes.**
16 Q. Okay. You testified earlier about
17 the talc claims and we talked a little bit
18 about the number of claims.
19 Do you recall that?
20 **A. Yes.**
21 Q. Okay. Do you have any
22 understanding of the specific nature of any
23 of the talc claims against LTL?
24 **A. I'm not sure I understand the**
25 **question.**

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1 R. WUESTHOFF
2 representing a majority of talc claimants if
3 you don't know the total amount of talc
4 claimants?
5 **A. That was my understanding from the**
6 **lawyers is that that -- the agreements had**
7 **the support of the lawyers of the majority of**
8 **the claimants.**
9 Q. What work did the Board do to
10 confirm that the PSAs represent settlements
11 with a majority -- with lawyers representing
12 a majority of talc claimants?
13 **A. We took our lawyers' words as**
14 **truthful. We didn't question our lawyers --**
15 **the understanding that they presented with**
16 **us, we didn't challenge that.**
17 Q. Did you see any analysis in that
18 regard from anyone, lawyers, financial
19 advisors, independent work by the company,
20 anything at all?
21 **A. No, we didn't feel the need to.**
22 **Like I said, we felt these agreements met our**
23 **objectives.**
24 Q. Okay. Do you know which law firm
25 negotiated the terms of the first Funding

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1 R. WUESTHOFF
2 Agreement on behalf of LTL?
3 **A. I do not. I don't recall, and I**
4 **don't know if I ever did. But no, I don't**
5 **know.**
6 Q. Okay. Do you know if the law firm
7 providing advice to LTL's Board in connection
8 with termination of the first Funding
9 Agreement and entering into the second
10 Funding Agreement was the same law firm that
11 represented it on negotiating the first
12 Funding Agreement?
13 **A. I don't know who was involved on**
14 **negotiating the first Funding Agreement.**
15 Q. Okay. Let me ask you: Did the
16 Board consider seeking new or separate
17 advice, counsel, for advice in connection
18 with termination of the first Funding
19 Agreement and entering into the second
20 Funding Agreement?
21 **A. No, we did not.**
22 Q. Why not?
23 **A. As I think I stated, we didn't**
24 **feel the need to. We felt that the documents**
25 **-- the termination agreement and the new**

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1 R. WUESTHOFF
2 **Funding Agreement and the Support Agreement,**
3 **that -- that met our objectives. We were**
4 **satisfied with that.**
5 Q. Did anyone at the Board ever raise
6 or consider discussing that situation with
7 the company's creditors to see what their
8 views were?
9 MR. JONES: Object as asked and
10 answered, I believe, earlier today.
11 MR. JONAS: It might have been,
12 Jim. I've lost track. So I'll let
13 the question stand. I appreciate the
14 objection.
15 BY MR. JONAS:
16 Q. But if you can answer that, I
17 appreciate it, Mr. Wuesthoff.
18 **A. Okay. I'm just listening to you**
19 **and Jim talking. Rephrase the question.**
20 Q. Sure. Do you recall whether the
21 -- anyone at the Board ever raised or
22 considered discussing the void or voidability
23 of Funding Agreement 1 with any of the
24 company's creditors or their professionals?
25 **A. No.**

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1 R. WUESTHOFF
2 Q. You don't recall whether that was
3 raised.
4 Is that -- or are you --
5 **A. I don't believe it was raised. I**
6 **certainly don't recall it being raised.**
7 Q. Okay. Thank you.
8 MR. JONAS: Last, just so we get
9 the record complete, if we turn to
10 Annex F, Isaac, it's a few pages
11 forward, please.
12 And you will see this says, "J&J
13 Support Agreement," and of this
14 agreement, if we turn to page 15 of
15 15.
16 BY MR. JONAS:
17 Q. Mr. Wuesthoff, that's your
18 signature at the bottom on behalf of LTL,
19 correct?
20 **A. Yes, it is.**
21 Q. Okay. And just to expedite, I
22 take it the details relating to your
23 execution were the same in terms of timing,
24 et cetera, as with respect to the other two
25 related documents we've looked at?

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1 R. WUESTHOFF
2 "MINUTES OF Board of Managers," "LTL
3 MANAGEMENT LLC," "March 16, 2023."

4 And, again, I'll represent to you
5 this -- in terms of the minutes that were
6 provided to us, this appears to be the next
7 meeting following February 23rd.

8 Is that your recollection, that
9 this would have been the next meeting
10 following the February 23rd meeting?

11 A. Yes. Yes.

12 Q. Okay. And, again, you were
13 present at this meeting, right?

14 A. Yes.

15

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1 R. WUESTHOFF

Age Group	Percentage
18-29	92%
30-49	91%
50-69	90%
70+	89%
Overall	91%

19 Q. Okay. Well, let me ask you: Why
20 did the Board ultimately determine it was
21 appropriate to file another bankruptcy?

22 A. Because we believed we weren't
23 financially in distress and filing another
24 bankruptcy was the way to best meet our
25 original objective, which has always been to

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1 R. WUESTHOFF

2 equitably and efficiently resolve all current
3 and future talc claims.

4 Q. You've said a few times, you've
5 used the words -- that the company, I
6 think -- tell me if I got this right.

7 I think you said the company was
8 in "financial distress"; is that what you've
9 said?

10 A. Yes.

11 Q. Okay. And what -- if you can just
12 describe that for me, was the company unable
13 to pay its electric bill? And I'm talking
14 specifically about this time period, March,
15 April 2023, because I think that's what you
16 are talking about.

17 Was the company unable to pay its
18 utility bills?

19 A. No. We were solvent. That was
20 not the issue. The concern was that we were
21 in financial distress.

22 Q. Okay. Well, let me break that
23 down a little bit.

24 When you say the company -- when
25 you use the word "solvent," what do you mean

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1 R. WUESTHOFF

2 by -- how do you -- when you use the word
3 "solvent," what do you mean?

4 **A. We were able to pay our bills and**
5 **meet our liabilities.**

6 Q. Okay. And so, just to put it in
7 more simple terms for me, the company was
8 able to pay its bills as they were coming due
9 at this point in time, correct?

10 A. Correct.

11 Q. Okay. And so what was the stress,
12 the financial distress, that the company was
13 experiencing?

14 A. It was the same financial distress
15 we were experiencing for the first
16 bankruptcy, which, then, was 38,000 claims.
17 Now, we believe, you know, it was a much
18 higher number than that.

19 The uncertainty of the outcomes,
20 the lottery size awards, the very large
21 settlement requests, the long tale of, you
22 know, 60-year latency period. All of those
23 things were factors then and they are factors
24 now, plus a lot more cases we believe,
25 certainly, than the 38,000.

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1 R. WUESTHOFF

2 Q. Okay. Thank you. And let me --
3 just to isolate.

4 Other than the fact that you
5 believed that there were more claims, was
6 there anything different about the financial
7 distress the company -- that you have
8 testified to in April of 2023 than in October
9 of '21?

10 A. No, the only difference, you know,
11 I think, would be the fact that our takeaway
12 was that the original Funding Agreement was
13 void and voidable.

14 Q. Okay. So, again, I just want to
15 make sure I understand.

16 The two differences between the
17 financial distress that you felt the company
18 was -- experienced in October of '21 versus
19 April of '23 were, one, you believed there
20 might have been more talc claims and, two,
21 you were concerned that the Funding Agreement
22 1 was void or voidable.

23 Have I got that right?

24 A. Yes, that's correct.

25 Q. And if I look at -- if we turn the

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1 R. WUESTHOFF

2 --

3 MR. JONAS: I'm sorry, go to the
4 next page, page 2.

8 Let me ask you: Do you know who
9 the Future Claimants Representative was in
10 LTL's first bankruptcy case?

11 A. I knew that name at one point, but
12 the name's escaping me at the moment.

17 Do you know whether the Future
18 Claimants Representative in the first LTL
19 bankruptcy case ever, in fact, indicated
20 support for the bankruptcy in the contours of
21 a plan?

22 A. And you are talking about LTL 1?

23 Q. Yes, the Future Claimants Rep is
24 LTL 1.

25 Do you know if that Future

1 R. WUESTHOFF

2 Claimants Representative ever indicated to
3 the company that the Future Claimants Rep
4 would support a further bankruptcy in
5 contours of a plan?

6 A. I don't recall specifically, no.

1 R. WUESTHOFF

2

4 Q. You don't know how that
5 \$8.9 billion number was arrived at, do you?

6 A. I do not.

7 Q. Do you know if anybody at LTL
8 asked the J&J entities on the other side of
9 the second Funding Agreement if they would do
10 a higher amount, they'd commit to a higher
11 amount?

12 A. I'm not aware of anybody asking
13 for that, no.

14 Q. Okay. Do you know who came up
15 with the \$8.9 billion number?

16 A. I do not.

17 Q. Okay. Do you think it would be
18 better for LTL's creditors if the number was
19 higher?

20 A. I guess if you look at the other
21 side, higher would be better, but I don't
22 think it would be justified.

23 Q. Okay. And when you say "the other
24 side," I'm sorry, what do you mean by "the
25 other side"?

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1 R. WUESTHOFF
2 **A. So -- so I think when you said,**
3 **you know, when the creditors want more.**
4 **Yeah, I guess, you know -- yeah, they might**
5 **want more. I would be supposing, but I --**
6 **based on the fact that the majority of the**
7 **lawyers representing -- the majority of the**
8 **claimants are in favor of the 8.9, I don't**
9 **think they are asking for more. I think it's**
10 **their decision.**
11 Q. And I think you said --
12 MR. JONAS: Rebecca, can you
13 read me back the answer right before
14 this answer, please.
15 (Record read.)
16 Q. New question.
17 When you say you "don't think it
18 would be justified," why do you say that;
19 what's the basis of that statement?
20 **A. Well, the basis goes back to, you**
21 **know, an earlier comment I made is, are -- we**
22 **believe J&J's talc is safe and it does not**
23 **cause cancer. So that's number one.**
24 **Number two is, the 8.9 billion**
25 **resolution is a huge number and with a lot of**

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1 **R. WUESTHOFF**
2 **claimants rep- -- the lawyers representing a**
3 **lot of claimants saying, yes, this is a good**
4 **deal, we like it.**
5 **To me, you know, those two things**
6 **would say, no, it's -- it would not be**
7 **warranted for anything higher than that.**
8 Q. So I just want to speak -- I want
9 to make sure I understand the basis on which
10 the Board decided to enter into the second
11 Funding Agreement and the \$8.9 billion number
12 included therein.
13 Was that a majority of -- was that
14 lawyers representing a majority of talc
15 claimants agreed to that number or supported
16 that number; is that right?
17 MR. JONES: Object to the form.
18 And asked and answered.
19 **A. Yeah, that was one reason. The**
20 **other reason is that all those agreements**
21 **combined, as I've stated earlier, eliminated**
22 **the material risk that the first Funding**
23 **Agreement was not enforceable and, in fact,**
24 **supported the terms in the Plan Support**
25 **Agreements that would lead to a resolution**

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1 **R. WUESTHOFF**
2 **with an \$8.9 billion payment.**
3 Q. Okay. And, again, I think you
4 generally testified to this, but I just want
5 to make sure.
6 You never saw any sort of
7 risk-adjusted analysis that supported
8 termination of Funding Agreement 1 and
9 entering into Funding Agreement 2, correct?
10 MR. JONES: Object to form.
11 **A. Correct. I never -- no.**
12 Q. And neither you nor, as far as you
13 know, the Board ever had -- ever was given
14 any analysis that there was a 10 or a 20 or a
15 90 percent chance that J&J could declare
16 Funding Agreement 1 void or voidable, right?
17 MR. JONES: Let me object,
18 Mr. Wuesthoff.
19 And ask you not to share any
20 communication from counsel.
21 **A. So, yes, I'm not -- I can't**
22 **answer.**
23 MR. JONAS: So, Jim, I'm not
24 asking him for any particular advice.
25 I just want to know whether the Board,

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1 **R. WUESTHOFF**
2 in making its decisions, those
3 decisions, was -- had at its disposal
4 any sort of percentage analysis,
5 likely of success, whatever you want
6 to call it.
7 I think that's an appropriate
8 question.
9 Are you instructing him not to
10 answer?
11 MR. JONES: I'm not -- I'm
12 instructing him not to answer, not to
13 give away the content of any
14 privileged communication.
15 If you want to ask him whether
16 he discussed with the Board -- the
17 Board discussed with counsel the
18 likelihood you suggest that's a topic.
19 I'm not going to ask him -- he
20 is not going to handicap or provide
21 any handicapping that may have been
22 provided. And I can't tell you that I
23 know whether any was.
24 MR. JONAS: Fair enough.
25 BY MR. JONAS:

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1 R. WUESTHOFF
2 Q. Mr. Wuesthoff, I'll take
3 instruction from Mr. Jones.
4 Did the Board ever discuss, at a
5 board meeting, the chances of success of the
6 -- of the void or voidability issue or
7 argument?
8 **A. No. We never discussed that.**
9 Q. Okay. And the Board never
10 requested that that type of analysis be done?
11 **A. No, it did not.**
12 Q. Okay. The next bullet says -- and
13 this will be the last bullet we will cover
14 here. It says, "Timing of another" bankru-
15 -- and then we'll, hopefully, take a quick
16 break.
17 It says, "Timing of another
18 bankruptcy to avoid chaos for both LTL and
19 the claimants."
20 Do you see that?
21 **A. Yes, I do.**
22 Q. Was it your view that another
23 bankruptcy was necessary to avoid chaos?
24 **A. No. I think this has to do with**
25 **timing of a bankruptcy.**

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1 **R. WUESTHOFF**
2 Q. And what do you mean by that?
3 **A. So my takeaway, after discussions**
4 **with the lawyers, is that if we were to delay**
5 **filing for another bankruptcy, in other**
6 **words, open this back up to the tort system,**
7 **only to then -- you know, then we file for**
8 **bankruptcy, that that would be very**
9 **disruptive to everybody and would -- as it**
10 **says here, would be "chaos" for everybody.**
11 **So that's why the timing was**
12 **important because -- we believed, to limit**
13 **the chaos for everybody to file quickly.**
14 Q. Okay, thank you. That's helpful.
15 MR. JONAS: Jim, if it's okay
16 with you, I'm at a little break. And
17 we have been going, again, for over an
18 hour.
19 Maybe we could take a
20 five-minute break?
21 MR. JONES: Yeah, let's take a
22 five-minute break. Sounds right. If
23 everybody is all right with that.
24 MR. JONAS: Thank you. We'll
25 see you in a couple of minutes.

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1 R. WUESTHOFF
2 THE VIDEOGRAPHER: We are going
3 off the record at 2:09 p.m. Eastern.
4 (Whereupon, a recess was held.)
5 THE VIDEOGRAPHER: We are back
6 on the record at 2:20 p.m. Eastern.
7 BY MR. JONAS:
8 Q. Mr. Wuesthoff, just to get you
9 back in the right frame, we had left off at
10 the March 16, 2023, board meeting.
11 MR. JONAS: And now I'm going to
12 ask that number -- tab number 19 get
13 put up on the screen.
14 Q. Which you will see in a minute.
15 It will be the minutes for the Board of
16 Managers meeting on March 28, 2023.
17 So let's just give Isaac a chance
18 to put that -- I see it in the chat there,
19 but let's wait until it comes up on the
20 screen.
21 (Whereupon, Wuesthoff Exhibit 5,
22 LTLMGMT-00000001 through '0005 was
23 marked for identification as of this
24 date by the Reporter.)
25 THE COURT REPORTER: And that's

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1 R. WUESTHOFF
2 Exhibit 5.
3 MR. JONAS: Thank you. Sorry
4 about that.
5 THE VIDEOGRAPHER: It's been
6 marked and introduced into LegalView
7 and now I will share the screen. Tab
8 19.
9 MR. JONAS: Great, thank you.
10 BY MR. JONAS:
11 Q. Okay. Mr. Wuesthoff, we are
12 looking at what's been marked as Wuesthoff 5,
13 which is minutes from the Board of Managers
14 meeting on March 28, 2023.
15 As best you can recall, would this
16 have been the next LTL Board of Managers
17 meeting after the March 16th meeting?
18 **A. Yes, it was.**
19 Q. Okay. And you were present,
20 correct?
21 **A. Correct.**
22 Q. Okay. And here, I see in the
23 first paragraph under "INTRODUCTORY REMARKS,"
24 it says that there would -- "Mr. Kim reviewed
25 the agenda," including "potential options of

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1 R. WUESTHOFF
2 potential, you know, cost of litigation or
3 whatnot.
4 Can I just ask, in connection with
5 filing -- in that regard, in connection with
6 filing again for bankruptcy, did you have any
7 new or additional information in that regard
8 or are you simply relying on the same
9 information from LTL 1, the first bankruptcy?
10 **A. The same information from LTL 1.**
11 **Q. Okay.**
12 **MR. JONAS:** No further
13 questions. Thank you.
14 That's all I've got, Jim.
15 **MR. JONES:** That's all I have.
16 We appreciate everybody's time today,
17 especially those in the support role,
18 Rebecca and Isaac. Thank you for your
19 help to me in particular, because I
20 didn't ask you in advance to be of
21 assistance.
22 We hope everybody has a great
23 rest of the afternoon. We will get
24 back to you on confidentiality.
25 **MR. JONAS:** Thanks, Rebecca and

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1 R. WUESTHOFF
2 team, and Isaac.
3 **THE VIDEOGRAPHER:** Conclude the
4 video, yes?
5 **MR. JONAS:** Yes.
6 **THE VIDEOGRAPHER:** This
7 concludes today's video deposition.
8 We are going off the record at
9 3:37 p.m. Eastern.
10 (Whereupon, at 3:37 p.m., the
11 Examination of this Witness was
12 concluded.)
13
14
15 _____
16 **ROBERT WUESTHOFF**
17 Subscribed and sworn to before me
18 this ____ day of _____, 2023.
19 _____
20 **NOTARY PUBLIC**
21
22
23
24
25

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2 E X H I B I T S
3
4
5 EXHIBIT EXHIBIT PAGE
6 NUMBER DESCRIPTION
7 Exhibit 1 LTL 0002300 through 51
8 '2320
9 Exhibit 2 DECLARATION OF JOHN K. 88
10 KIM IN SUPPORT OF
11 FIRST DAY PLEADINGS
12 Exhibit 3 LTLMGMT-00013464 103
13 through '3465
14 Exhibit 4 LTLMGMT-00002626 107
15 through '2627
16 Exhibit 5 LTLMGMT-00000001 123
17 through '0005
18 Exhibit 6 LTLMGMT-00002641 133
19 through '2667
20 Exhibit 7 LTLMGMT-00000006 144
21 through '0019
22 Exhibit 8 LTLMGMT-00002668 148
23 through '2679
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5 EXAMINATION BY PAGE
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7 MR. THOMPSON 157
8 MR. JONES 166
9 MR. JONAS 180
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